

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00171
Petitioner: Mary L. Osiel
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0200-0006
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 30, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$123,500, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. A hearing was held on November 30, 2004 in Crown Point, Indiana before Special Master Salvesson.

Facts

5. The subject property is located at: 358 South Wabash Street, Hobart, Hobart Township
6. The subject property is a single home on 0.413 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$30,200, Improvements \$93,300.
 - b) Assessed Value requested by Petitioner:
Total \$113,000.
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Mary L. Osiel, Owner

For Respondent: Everett Davis, DLGF

Issue[s]

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:

- a) An appraisal of the subject property places the 1999 market value at \$113,000. *Osiel testimony; Pet’r Ex. 5-6.* The appraisal was completed by a licensed appraiser. *Osiel testimony.*
- b) Based on the appraisal, the assessment of the subject property should be \$113,000. *Osiel argument.*

11. Summary of Respondent’s contentions in support of the assessment:

- a) The documents submitted as Pet’r Ex. 5-6 are not considered to be an appraisal. *Davis argument.* Instead it is an “opinion value”. *Id.* More work is required for an actual appraisal. *Id.*
- b) A comparable sale from the subject’s neighborhood was used to assess the property. *Davis testimony; Resp’t Ex. 4.*

Record

12. The official record for this matter is made up of the following:

- a) The petition, and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled Lake Co - 874.
- c) Exhibits:
 - Petitioner Exhibit 1: Notice of Hearing on Petition
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Form 139L Petition
 - Petitioner Exhibit 4: Form 11 – Notice of Assessment of Lane and Structures
 - Petitioner Exhibit 5: Affidavit of Joe Casco
 - Petitioner Exhibit 6: Appraisal of Subject Property by Ginter Realty

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject Property Record Card

Respondent Exhibit 3: Subject Photo Property
Respondent Exhibit 4: Comparable Sales Sheet
Respondent Exhibit 5: Comparable Property Record Cards & Photographs
Respondent Exhibit 6: Additional Comparable Property Record Cards & Photographs

Board Exhibit A: Form 139L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject property should be lowered from \$123,500 to \$113,000.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as the “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.

- c) In her attempt to show the market value-in-use of the subject property, the Petitioner submitted what she termed an “appraisal”, and the Respondent termed an “opinion of value.” *Pet’r Ex.5-6.*
- d) An appraisal is “the money value of property as estimated by an appraiser.” *MANUAL* at 8. Thus, an “appraisal” and an opinion of value” are one in the same.
- e) The appraisal was completed by licensed appraiser. The document does not state whether USPAP standards and guidelines were followed. However, the appraisal shows two comparable properties, and the appraised value of the subject property as determined by the appraiser appears reasonable based on the comparables. As a result, the Petitioner has made a prima facie case, and the burden shifts to the Respondent to defend the assessment.
- f) The Respondent submitted a comparable sales sheet (*Resp’t Ex. 4*) and testified that the assessment was based on the sale of one comparable property. Thus, to determine which party prevails in this case, the Board will examine each party’s comparable properties and decide which are “more comparable.”
- g) The Petitioner’s two comparables are on the same street as the subject, are only slightly smaller in square footage than the subject, and one of the two comparables has the same year of construction as the subject. The Respondent’s comparable is on a different street, is approximately 250 square feet smaller than the subject, and is 11 years newer. Therefore, the Petitioner’s evidence is determined to be more probative as to the value of the subject property than the Respondent’s evidence.
- h) As a result, the Board hereby determines that the assessment of the subject property should be changed to \$113,000.

Conclusion[s]

- 15. The Petitioners made a prima facie case. The Respondent did not rebut petitioner’s evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

 Commissioner,
 Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>